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November 21, 2007

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VIA FACSIMILE and E-FILING

Hon. Noel L. Hillman, U.S.
United States District Judge
U.S. District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Hon. Ann Marie Donio
United States Magistrate Judge
U.S. District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Re: In re: Pet Food Products Liability Litigation, MDL Docket No. 1850 (All Cases);
Civil Action number: 07-2867

Judge Hillman and Magistrate Judge Donio:

I have been advised that plaintiffs served a subpoena duces tecum and ad testificandum upon the defendants' statistician, Dr. George McCabe, in the Southern District of Indiana on November 20, 2007, despite the fact that *this* Honorable Court issued a stay of all proceedings on September 26, 2007. Plaintiffs did not attempt to obtain this Court's permission to lift the stay in order to issue the subject subpoena and seek discovery, nor did they ever request such permission. The subject subpoena is enclosed herein for the Court's reference. The Indiana subpoena commands full compliance at 9:00 a.m. on November 23, 2007, only two days after service, not including the Thanksgiving Day holiday.

It is the position of Del Monte Foods Company (Del Monte) that this subpoena is improper, unnecessary and that Del Monte has strong grounds to move for a protective order,

amongst other relief. However, given tomorrow's holiday and this Court's recess on November 23, 2007, any motion filed today by Del Monte will provide this Court with very little time to decide the motion prior to November 23, 2007. Therefore, Del Monte is advising the Court of this dilemma and its impending motion. If this Court has a preferred procedural method for which Del Monte may move to ensure resolution prior to 9:00 a.m. on November 23, 2007, Del Monte shall, of course, comply with same.

The present stay of proceedings notwithstanding, plaintiffs have not demonstrated, have not attempted to demonstrate and, indeed, cannot demonstrate exceptional circumstances requiring the deposition of Dr. McCabe, a witness not designated or anticipated to testify at trial. *See Fed. R. Civ. P. 26(4)(B)*. This is particularly so given the fact that Del Monte has provided plaintiffs with all documents that it gave to Dr. McCabe and, along with the other defendants, has repeatedly offered to permit plaintiffs' retained statistician to speak directly with Dr. McCabe. If plaintiffs were truly interested in resolving the preservation issues that face Del Monte and other defendants by questioning Dr. McCabe, they would have accepted these offers, which they have not.

Moreover, the plaintiffs have wholly failed to provide the parties and Dr. McCabe with sufficient notice of this deposition, as required by Federal Rule 26(5)(d). Plaintiffs were first made aware of the fact that Del Monte would be propounding its motion that is currently pending before this Court a full week ago, on November 14, 2007. Well before that date, as part of the lengthy negotiation process among the parties, plaintiffs were provided with Dr. McCabe's opinions, as well as the facts upon which they were based. Thus, the undersigned questions why plaintiffs waited until yesterday to issue the subpoena and today to serve a Notice of Issuance of Subpoena to take a deposition the day after a National holiday – a day this Honorable Court is in recess.

Finally, the subpoena, as drafted, is overly broad and unduly burdensome and is clearly designed to harass and annoy Del Monte and Dr. McCabe.

The foregoing notwithstanding, Del Monte remains committed to an expeditious resolution of the preservation issues now before this Court. To that end, today, Del Monte has reiterated its prior offers to allow plaintiffs' retained statistician to speak directly with Dr. McCabe and to take samples of all of its recalled product, up to and including all of it. The undersigned thanks this Court for its time and attention to this matter.

Sincerely,

COZEN O'CONNOR
Attorneys for Defendant Del Monte Foods, Inc,

/s

By: Richard Fama

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